

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4093 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

MOHMAD ALI ABRAHIM LOHAR

Versus

GRAM PANCHAYAT, DHANERA & ORS.

Appearance:

Kum. K.M. Shah, Advocate, for the Petitioner

Respondent No. 1 served

Shri T.H. Sompura, Asst. Govt. Pleader, for
Respondents Nos. 2 and 3

Shri V.H. Patel, Advocate, for Shri H.L. Patel,
Advocate, for Respondent No. 4

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 17/04/96

ORAL JUDGEMENT

The order passed by the City Survey Superintendent at Dhanera (respondent No. 2 herein) on 14th March 1985 as also the order passed by the Collector of Banaskantha at Palanpur (respondent No. 3 herein) on 21st April 1986 are under challenge in this petition

under art. 226 of the Constitution of India. By his impugned order, respondent No. 2 has ordered eviction of the petitioner from the encroached area and directed him to pay additional assessment in the sum of Rs. 20 and local fund in the sum of Rs. 20 and education cess in the sum of Rs. 5 and the fine of Rs. 100. By his impugned order, respondent No. 3 has refused to regularise the encroachment made by the petitioner to the extent of 44 square meters in one parcel of land bearing sheet No. 30 to the West of Survey No. 2457 situated at Dhanera (the disputed land for convenience).

2. The facts giving rise to this petition move in a narrow compass. The petitioner claims to be the tenant of the disputed land through the gram panchayat at Dhanera (respondent No. 1 herein). He is carrying on his business of blacksmith therein. It however appeared to the concerned authority that he had encroached upon that land. He thereupon applied to respondent No. 2 for its allotment on permanent basis. It appears that the Sarpanch of respondent No. 1-panchayat recommended allotment of the disputed land in favour of the petitioner by addressing one communication on 23rd/24th April 1984 to respondent No. 2 herein. Its copy is at Annexure F to this petition. By his order passed on 14th March 1985, respondent No. 2 found that the petitioner had encroached upon the land in question and he therefore ordered his eviction therefrom and payment of the amounts as aforesaid. Its copy is at Annexure G to this petition. It appears that the petitioner had also applied for regularisation of his encroachment by his application of 2nd March 1984. By his order passed on 21st April 1986, respondent No. 2 rejected that application. Its copy is at Annexure J to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 226 of the Constitution of India for questioning the correctness of the orders at Annexures G and J to this petition.

3. According to learned Advocate Kum. Shah for the petitioner, respondent No. 2 was not justified in coming to the conclusion that the petitioner had encroached upon the land in view of the fact that the petitioner had taken it on lease from respondent No. 1 panchayat. She has invited my attention to copies of rent receipts at Annexures A to D to this petition. It transpires therefrom that the petitioner is on the disputed land at least from 1st April 1967. That becomes clear from the recommendatory letter issued by the sarpanch of respondent No. 1-panchayat at Annexure F to this petition. The grievance voiced by Kum. Shah for the

petitioner is to the fact that respondent No. 2 has not taken this evidence into consideration.

4. It transpires from the order at Annexure G to this petition that the petitioner admitted encroachment on the disputed land by his reply of 22nd February 1985. Learned Advocate Kum. Shah for the petitioner submits that respondent No. 2 has misread the aforesaid reply of the petitioner as transpiring from the order at Annexure G to this petition that the grievance of the petitioner was that respondent No. 1 panchayat had stopped accepting rent from him. It appears that the petitioner's grievance before respondent No. 2 was that the petitioner was a tenant of the disputed land through respondent No. 1 panchayat and that respondent No. 1 panchayat had stopped accepting rent from him and he wanted the disputed land to be allotted on permanent basis. The so-called admission about his encroachment appears to be under some misconception of legal position in that regard. It appears that respondent No. 2 has not applied his mind to the question whether or not the petitioner was a tenant of the disputed land through respondent No. 1 panchayat and whether or not respondent No. 1 panchayat was justified in not accepting rent from him. Besides, respondent No. 2 has not considered the petitioner's claim regarding permanent allotment of the disputed land in his favour. Kum. Shah for the petitioner seems to be right in her submission that the impugned order at Annexure G to this petition suffers from the vice of non-application of mind on the part of its author.

5. So far as the impugned order at Annexure J to this petition is concerned, the grievance voiced thereagainst is that it was passed without giving an opportunity of hearing. The petitioner has voiced his grievance in that regard in para 19 of his petition. That averment has remained uncontroverted as no counter thereto has been filed by or on behalf of the respondents or any of them.

6. Without deciding the question whether or not the petitioner is entitled to personal hearing in the matter, it would have been desirable on the part of respondent No. 3 to bring to the notice of the petitioner the grounds on which his application for regularisation of the so-called encroachment could not be considered. If such grounds were brought to the notice of the petitioner, he could have pointed out to respondent No. 3 by means of his appropriate representation or by requesting for grant of personal hearing how those

grounds could not have come in his way against grant of his application for regularisation of his so-called encroachment.

7. Besides, respondent No. 3 has given as many as four grounds for rejection of the petitioner's application. These grounds can be said to be quite vague. The first ground is that the encroachment is on the road and its regularisation would result in obstruction to traffic. It does not become clear therefrom as to on what basis respondent No. 3 has come to that conclusion. He could have been specific in observing that it was a street or a road in the village or that it was a major district road or a highway or something like that. Besides, he has not chosen to refer to what is the flow of traffic on the said road and how it would be of obstruction if encroachment is regularised.

8. The second ground against regularisation of encroachment is that no industrial activity can be permitted in the village site. It appears that respondent No. 3 has not applied his mind in that regard. It is an admitted position that the petitioner carries on his business of blacksmith on the disputed land. I wonder as to whether the business activities of a blacksmith can be likened to an industrial activity.

9. The third ground is that the recommendation from the gram panchayat for regularisation of the encroachment was not produced. It appears that respondent No. 1 panchayat did recommend allotment of the disputed land in favour of the petitioner as transpiring from its communication at Annexure F to this petition. Similar is the communication of 26th April 1985 at Annexure H to this petition. If respondent No. 3 had any doubt about it, he could have sought the panchayat's opinion in that regard. He could have called upon the petitioner to bring on record the panchayat's opinion on the subject-matter. It was not desirable to reject the application on this ground without calling for the necessary information.

10. The fourth ground given by respondent No.3 in his impugned order at Annexure J to this petition is absolutely untenable. It has been mentioned therein that the neighbouring owner has objection against regularisation of the encroachment on account of breach of his easementary right. If the neighbouring owner has any easementary right qua the disputed land, he could have approached the civil court for establishment of his

easementary right. Without establishment of such easementary right, respondent No. 3 was not justified in taking such alleged easementary right into consideration. I am therefore of the opinion that the impugned order at Annexure J to this petition is too vague to be upheld in law.

11. Learned Assistant Government Pleader Shri Sompura has invited my attention to sec. 98 of the Gujarat Panchayats Act, 1961 and has submitted that recommendations made by respondent No. 1 panchayat for allotment of the disputed land in favour of the petitioner will be of no consequence unless it is shown that the land in question has vested in respondent No. 1 panchayat. I think respondent No. 3 has not rejected the application of the petitioner on the ground that the land in question did not vest in the panchayat and the panchayat had no right to make any recommendation. In fact, in the third ground of objections against grant of the application is based on absence of such recommendation for the purpose from respondent No. 1 panchayat. It would ordinarily mean that the land in question had vested in respondent No. 1 panchayat. It will however be open to respondents Nos. 2 and 3 to enquire about the correct position of the disputed land qua its vesting in the panchayat.

12. In view of my aforesaid discussion, I am of the opinion that the impugned orders at Annexures G and J to this petition cannot be sustained in law. They have to be quashed and set aside. The matter has to be remanded to respondent No. 3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. If necessary, he may give an opportunity of hearing to the petitioner to show that he was the tenant of the disputed land through respondent No. 1 panchayat. In case it is found that the encroachment is on a street land, the petitioner's case for allotment of a suitable land for his business and residence may be taken into consideration as the petitioner's business activities is more or less essential for agriculturists in the village. In that case, he may not be evicted from his present place of business activities till alternative arrangement is made.

13. In the result, this petition is accepted. The order passed by the City Survey Superintendent at Dhanera on 14th March 1985 at Annexure G to this petition as also the order passed by the Collector of Banaskantha at Palanpur (respondent No. 3) on 21st April 1986 at Annexure J to this petition are quashed and set aside.

The matter is remanded to respondent No. 3 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.
